

PENNSYLVANIA

\$700 NET VERDICT

F **H** Fowler
Hirtzel
M **S** McNulty
Spaulding

Plaintiff sustained a mildly displaced fracture to her left elbow and soft tissue injuries when she fell in the lobby of the Defendant restaurant immediately upon stepping from a runner rug onto the tile floor. The location of Plaintiff's fall was directly adjacent to a "CAUTION ~ WET FLOOR SIGN." Her fall occurred less than 2 hours after the restaurant opened and the lobby video surveillance clearly depicted plaintiff's fall as well as a few other patrons before the incident appearing to have shaky footing on the floor due to apparent wetness which the trial court admitted over objection. The statements that the floor was "slippery" at the time of Plaintiff's fall by the two restaurant hostesses on duty at the time were also admitted over objection, although the court agreed that the statement by one of the hostesses that the floor was an "ice skating rink" should be excluded from evidence.

The former assistant manager of the restaurant who was on duty at the time testified that the floor was "slippery" on the day in question because of humid conditions inside the restaurant, which he said were common. Those conditions led to the placement of the "CAUTION..." sign on a regular basis at the location of Plaintiff's fall, which Plaintiff's counsel accused the restaurant of using as a "get out of jail free card." Notably, the evidence established that in more

than 500,000 patrons who traversed the location in question, there was only one fall, that of Plaintiff's. Moreover, despite plaintiff's contention that she never saw the "CAUTION..." sign, the defense relied on the evidence establishing that Plaintiff should have seen the warning sign which she admitted, had she seen it, would have prompted a course of action that would have resulted in her avoiding the condition which she claimed was dangerous.

On damages, the undisputed evidence was that plaintiff permanently lost 5 degrees in range of motion in her arm because of her fracture (Plaintiff's expert opined it was a loss of 15 degrees). Plaintiff testified somewhat inconsistently that she had continued pain and limitation in her activities because of her injury which her expert causally related to the accident. The defense argued that whatever limitation in motion plaintiff experienced was due to her failure to obtain the physical therapy recommended, on a few occasions, by her treating physician.

The jury was reportedly hung on liability for several hours but eventually returned a verdict allocating 30% comparative negligence against the Plaintiff and awarded her gross damages in the amount of \$1,000.



Gregory Hirtzel

717.553.2601
ghirtzel@fhmslaw.com



Benjamin Novak

717.696.0551
bnovak@fhmslaw.com